

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-184894

DATE: February 24, 1976

MATTER OF: Lite Industries, Inc.

60562  
98561

## DIGEST:

Bid modification received at installation 26 minutes before 1:00 p.m. bid opening but received at bid opening after 1:00 p.m. is not for consideration since late receipt at bid opening was not due solely to mishandling by Government. Reasonable distribution procedures could not have insured modification's receipt in 26 minutes, given approximate 5 mile distance from communications center to office designated for bid opening.

The United States Army Tank-Automotive Command (TACOM) issued invitation for bids (IFB) No. DAAE07-75-B-2245 for seat cushions. Eight firms including Lite Industries, Inc. (Lite) submitted bids as required on August 15, 1975, at 1:00 p.m., EDT. Lite contends that its telegraphic modification received at TACOM's communications center at 12:34 p.m., EDT, but not received at the office designated for bid opening until after the time set for bid opening, was timely and should have been considered.

Section C of the IFB, entitled Solicitation Instructions and Conditions and Notice to Offerors, informed offerors that clause 02 of TACOM's Master Solicitation was applicable to the procurement. Clause 02 incorporated Armed Services Procurement Regulation (September 1974) 7-2000.2, Late Bids, Modification of Bids or Withdrawal of Bids which provides that a telegraphic modification received at the office designated in the solicitation after the date and time set for bid opening may be considered if the telegraphic modification was received at the Government installation prior to bid opening and the late receipt at the office designated for bid opening is due solely to Government mishandling.

The Army maintains that, although the teletype modification was received at TACOM's communications center 26 minutes before bid opening, the late receipt of the modification at the office designated for bid opening was not due solely to Government mishandling. The Army cites our decision in Stack-On Products Company, B-181862,

October 22, 1974, 74-2 CPD 220, to support its position that, under the circumstances, 26 minutes is an unreasonably short time to expect the installation's personnel to receive, read, and deliver the message to a bid opening room located approximately 5 miles from the communications center. In that case, we found that due to the heavy volume of messages handled, 30 minutes delay between receipt at the GSA communications building and relay of the message to the bid opening building did not constitute mishandling "at the Government installation." We also held that due to the number of personnel available to extract and time stamp the messages during the high volume period, 50 minutes delay between actual receipt and recordation after receipt would not constitute mishandling at the communications center.

In determining whether there has been mishandling at the Government installation, however, our Office will consider the procedures adopted for further transmittal of the message to final destination. Where such means of transmittal are calculated to effect delivery within a reasonable time, our Office will further consider any special circumstances which might affect the delivery period. A reasonable interval for processing at one Government installation is not necessarily a reasonable interval at all installations; rather, the administrative agency involved is responsible for determining reasonableness. Stack-On, supra.

The record shows that no requirement existed at TACOM's communications center for notifying the bid opening officials that a message had arrived. Thus, unlike Stack-On, supra, "special circumstances" of this case exist primarily with regard to the physical distance between the communications center and the bid opening room, rather than with regard to the volume of messages. TACOM notes that in the normal course of business, a non-scheduled carrier would have picked up Lite's message at the communications center and delivered it to the Procurement and Production Directorate on the last of the carrier's three daily rounds. On Friday, August 15, 1975, the carrier should have delivered Lite's message to the Procurement and Production Directorate in mid-afternoon and subsequent delivery to the bid opening room should have been accomplished by 3:45 p.m. Although the message was not received in the bid opening room until the following Monday, TACOM states that its investigation shows the normal delivery process was not delayed until after the message was delivered to the Procurement and Production Directorate which delay, given the delivery schedule and distance involved, would have occurred after the time set for bid opening.

We believe the record supports TACOM's finding that Lite's transmission of the modification 26 minutes before bid opening would not have given TACOM sufficient opportunity to deliver the modification to the bid opening room under TACOM's established procedures. However, we are not prepared to say that TACOM's communication procedure is calculated to transmit bids to the bid opening room in a reasonable period of time. In this connection, we note that TACOM is experimenting with a relay communications system which it hopes will become fully operational in the near future and which, presumably, will reduce delays in relaying communications to the bid opening office. We agree that efforts should be made to improve such communications.

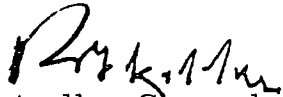
At the same time, we believe that Lite must share some of the blame for the late arrival of its bid modification. In our opinion reasonable distribution procedures could not have insured the modification's receipt in time 26 minutes from its arrival at the installation communications center, which is located 5 miles from the place of bid opening. Therefore, we believe the lateness was not due solely to mishandling by the Government.

Lite further contends that TACOM deviated regularly from the requirements of ASPR 7-2002.2 by considering bids or modifications solely on the basis of whether such bids or modifications were received in the communications center prior to bid opening. As evidence of this fact, Lite relies (1) on the practices of other DOD agencies that consider bids or modifications as timely if received prior to bid opening at the installation rather than at the bid opening unit, and (2) on statements to the same effect allegedly made by TACOM's personnel subsequent to bid opening. As noted above, the record shows no requirement instituted at TACOM's communications center for handling telegraphic modifications by other than TACOM's normal internal distribution channels. Moreover, TACOM denies that it has ever deviated from the express language of ASPR 7-2002.2 requiring receipt at the office designated in the solicitation or that it so informed Lite. Consequently, even if Lite had been informed of the existence of such practice at TACOM, such information would appear to be erroneous since the record before us contains no probative evidence of the existence of such a practice. Moreover, Lite could not have been misled to its detriment by any such advice in this case since the alleged conversations took place after bid opening.

As to whether DOD agencies are consistent in their treatment of telegraphic bids and modifications, we are requesting the Secretary of Defense to look into this matter.

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For the reasons stated above, we conclude that Lite's telegraphic modification properly was not considered by TACOM. Accordingly, the protest is denied.

  
Deputy Comptroller General  
of the United States